

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of	)	
	)	
High Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	

## Comments of TCA

### I. Introduction and Summary

TCA, Inc. - Telcom Consulting Associates (TCA) hereby submits these comments in response to the trilogy of Notices of Proposed Rulemaking (NPRMs) released by the Federal Communications Commission (FCC or Commission) on January 29, 2008. The first NPRM requested comment on the recommendations of the Federal-State Joint Board on Universal Service (Joint Board) regarding comprehensive reform of high-cost universal service support.<sup>1</sup> Additionally, the FCC also requested comment on two additional NPRMs adopted on January 9, 2008. One sought comment on the FCC's conclusion that the "identical support rule" should be eliminated and necessary rule revisions required to implement this change.<sup>2</sup> Another NPRM requested comment of whether and how to use reverse auctions to distribute high-cost universal service funds to eligible telecommunications carriers

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<sup>1</sup> *Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket 96-45, Recommended Decision, FCC 07J-4 (rel. November 20, 2007) (*Recommended Decision*)

<sup>2</sup> *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket 96-45, Notice of Proposed Rulemaking, FCC 08-4 (rel. January 29, 2008) (*Identical Support NPRM*)

(ETCs).<sup>3</sup> TCA appreciates the opportunity to again comment on the critical issues surrounding comprehensive, long-term reform of federal high-cost universal service support.

TCA is a consulting firm that performs financial, regulatory, management, and marketing services for over one hundred small, rural local exchange carriers (LECs) and their affiliates throughout the United States. TCA clients serve some of the most sparsely populated, high-cost areas of the country and depend upon federal and state universal service support mechanisms in order to provide state of the art communications services to their customers and advance the policy of universal service. Accordingly, TCA files these comments of behalf of its clients, which will be directly impacted by this proceeding.

TCA concurs with the Joint Board's recommendation to establish a separate Mobility Fund, which would require the construction of wireless facilities in unserved areas in exchange for high-cost universal support. TCA also agrees with the recommendation of the Joint Board to establish a separate Provider of Last Resort (POLR) Fund comprised of legacy LEC support mechanisms. While TCA agrees with the Joint Board that broadband should be added to the list of supported services, we cannot support the proposed Broadband Fund until more details and funding are identified. Finally, TCA does not support the Joint Board's proposed caps on high-cost universal service support, which will preclude the deployment of ubiquitous broadband. TCA strongly agrees with the FCC's conclusion that the identical support rule should be eliminated. TCA also agrees with the FCC that high-cost support for wireless ETCs must be based upon the cost of providing wireless service in high-cost areas and directly linked to facility investments that expand wireless coverage. Finally, TCA strongly opposes the use of reverse auctions to distribute high-cost universal service support. Reverse auctions would

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<sup>3</sup> *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket 96-45, Notice of Proposed Rulemaking, FCC 08-5 (rel. January 29, 2008) (*Reverse Auctions NPRM*)

discourage investment in high-cost areas, bringing broadband deployment to a halt. Ultimately, reverse auctions would result in service degradation in high-cost areas, instead of the preservation and advancement of universal service as required by the Telecommunications Act of 1996 (the Act).

## II. Previous TCA Comments

TCA has responded to several previous requests by the Joint Board for comment regarding the reform of federal universal service support mechanisms. Many of these comments are as relevant today as when they were filed.

In August 2004,<sup>4</sup> TCA stated that the current universal service support mechanisms for rural LECs have proven successful at preserving and advancing universal service and accordingly, should not be modified. TCA also recommended that the Joint Board re-examine the current policies of providing support to wireless ETCs based upon the cost of the incumbent rural LECs of providing service. TCA contended that this policy – enacted primarily to promote “competition” in the service areas of rural LECs – has resulted in an unsustainable growth in federal high-cost support mechanisms and provided little benefit to rural consumers.

In August 2005,<sup>5</sup> TCA opposed the four different plans proposed by various state regulators, as each plan contained a “block grant” that would enable state commissions to distribute federal high-cost support based upon various criteria. TCA asserted that this delegation of the distribution of federal universal service funds under potentially fifty different sets of rules would violate the statutory mandate for specific, predictable and sufficient support mechanisms to preserve and

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<sup>4</sup> *Federal-State Joint Board on Universal Service Seeks Comment on Certain Commission’s Rules Relating to High-Cost Universal Service Support*, CC Docket No. 96-45, Public Notice FCC 04J-2 (rel. August 16, 2004)

<sup>5</sup> *Federal-State Joint Board on Universal Service Seeks Comment on Proposals to Modify the Commission’s Rules Relating to High-Cost Universal Service Support*, CC Docket No. 96-45, Public Notice FCC 05J-1 (rel. August 17, 2005) (*August 2005 Public Notice*)

advance universal service. TCA also reiterated that constraining the growth of the federal universal service fund needs to be focused on the cause of the growth – the uncapped receipt of support by wireless ETCs totally unrelated to their cost of providing service.

In October 2006,<sup>6</sup> TCA asserted that competitive bidding for federal high-cost support is not appropriate when the primary providers of universal service in this country – rural LECs – face a competitive disadvantage, as a result of their greater obligations and responsibilities. Furthermore, while reverse auctions could be used to introduce a much needed element of cost into the determination of support for wireless ETCs, no such need exists for rural LECs -- whose support is attributable to the actual cost of providing universal service. Finally, reverse auctions will not provide specific, predictable and sufficient support for rural LECs and will, therefore, violate the universal service mandate established by the Act.

In May 2007,<sup>7</sup> TCA recommended that the Joint Board propose the elimination of the “identical support” rule, which produced the explosive growth in high-cost universal service support distributions. Instead, TCA recommends that high-cost support for competitive ETCs be based upon their own costs of providing service in high-cost areas. TCA also opposed the use of reverse auctions to distribute high-cost support, as this radical change would be detrimental to rural consumers.

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<sup>6</sup> *Federal-State Joint Board on Universal Service Seeks Comment on the Merits of Using Auctions to Determine High-Cost Universal Service Support*, WC Docket No. 05-337, CC Docket No. 96-45, Public Notice FCC 06J-1 (rel. August 11, 2006)

<sup>7</sup> *Federal-State Joint Board on Universal Service Seeks Comment on Long Term, Comprehensive High-Cost Universal Service Support*, WC Docket No. 05-337, CC Docket No. 96-45, Public Notice FCC 07J-2 (rel. May 1, 2007)

In June 2007,<sup>8</sup> TCA supported the Joint Board's proposal to adopt an interim cap as a means to stem the growth of the high-cost universal service support provided to competitive ETCs. TCA agreed that by capping wireless ETC support at 2006 levels, the Commission could minimize, for an interim term, the growth of the fund until a long term solution is implemented.

### **III. Joint Board Recommended Decision**

TCA commends the Joint Board for its Recommended Decision on comprehensive universal service reform and the recognition that distribution of funds to wireless ETCs requires extensive reform. TCA generally supports many of the conclusions of the Recommended Decision and encourages prompt action by the FCC in implementing many of the proposals. While TCA supports adding broadband to the current definition of supported services, it is very concerned that capping federal high-cost support mechanisms will prevent this critical service from being deployed to all high-cost areas of the nation.

#### **A. TCA Supports the Creation of a Separate Mobility Fund**

TCA commends the Joint Board for correctly recognizing the difference between support provided to rural LECs and wireless ETCs. TCA has long contended that it is not in the public interest to use high-cost universal service support to subsidize competition and is glad that the Joint Board has finally reached the same conclusion.<sup>9</sup> Rural LECs have relied upon federal support mechanisms to recover the cost of deploying broadband-capable facilities in sparsely populated areas, while providing service to customers at reasonably comparable rates as those paid by urban consumers. Conversely, wireless ETCs have been provided high-cost universal service funds (based upon cost of deploying a

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<sup>8</sup> *In the Matter of High-Cost Universal Service Support and Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, FCC 07-88, Notice of Proposed Rulemaking, (rel. May 14, 2007).

<sup>9</sup> *Recommended Decision* at para. 35

ubiquitous wireline network) for little more than promising to expand wireless coverage in unserved areas. The Mobility Fund would ensure that these promises become a reality by requiring facilities to be constructed in sparsely populated areas currently without wireless coverage.

Unfortunately, very few wireless carriers have used universal service funds to expand coverage in unserved areas. This distressing fact was confirmed by a recent study,<sup>10</sup> which found that wireless ETCs provide little incremental coverage compared to unsubsidized carriers and concluded that to the extent subsidies to wireless ETCs are intended to increase the availability of wireless service in high cost areas, the vast majority of the funds are simply wasted.<sup>11</sup> The Vantzelfde study attributed this to the fact that many of the facility deployments by wireless ETCs are economical in the absence of subsidies and that wireless ETCs concentrate their coverage in areas easiest to serve – the same areas most likely to have existing coverage from unsubsidized carriers. The Kansas Corporation Commission (KCC) has encountered this very problem in certifying the intended use of federal support mechanisms for wireless ETCs,<sup>12</sup> primarily Alltel Wireless – the largest recipient of federal universal service funds. The KCC has attempted to require Alltel Wireless to invest its federal universal service funds to expand its coverage in the same high-cost areas to which the funds are attributable.<sup>13</sup> Instead of complying with this intuitive principle – that high cost funds should be invested in high cost areas - Alltel Wireless has refused and insists that facilities investments in low-cost areas constitute an intended use of federal universal service funds. Not only has Alltel

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<sup>10</sup> *The Availability of Unsubsidized Wireless and Wireline Competition in Areas Receiving Universal Service Funds*, authored by Nicholas Vantzelfde, Criterion Economics, L.L.C., released June 13, 2007 (Vantzelfde study)

<sup>11</sup> *Ibid.*, p. 22

<sup>12</sup> See KCC Docket No. 07-GIMT-498-GIT

<sup>13</sup> Alltel Wireless is projected to receive approximately \$60 million in federal high-cost universal service support in 2008 for its Kansas operations.

Wireless rejected the KCC's decision, it has continued the fight in both the court system and the legislative arena.

The Joint Board's recommendation of the creation of a separate Mobility Fund – which would provide subsidies for construction of facilities in unserved areas – would provide some level of assurance that universal service funds are actually being used to advance universal service.<sup>14</sup> The Joint Board has previously requested comment on a similar proposal,<sup>15</sup> which would have established a separate wireless fund with the goal of improving coverage in underserved and unserved areas by subsidizing the construction of wireless infrastructure.<sup>16</sup> The proposed Mobility Fund includes several aspect of this proposal – most importantly, the link between high-cost universal service support and network investment in areas without adequate wireless service. By limiting support to a single recipient, the Mobility Fund would end the current practice of subsidizing multiple wireless networks in areas unable to support a single provider without support mechanisms. The Joint Board correctly recognizes that this failed policy has greatly increased the size of the federal high-cost fund and needs to be ended. The reforms envisioned by the creation of the Mobility Fund are far more likely to improve wireless service in rural areas than the Commission's current policies – and at a fraction of the cost.

Finally, the Mobility Fund could be quickly implemented, which would enable consumers in sparsely populated areas to finally receive the benefits of wireless

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<sup>14</sup> U.S.C. §254(e) requires that federal universal service support only be used for the provision, maintenance and upgrading of facilities for which the support is intended.

<sup>15</sup> See *August 2005 Public Notice*, pp. 20-27. *The Universal Service Endpoint Reform Plan* ("USERP"), authored by Peter Bluhm, Vermont Public Service Board, Joel Shifman, Maine Public Utilities Commission and Jeff Pursley, Nebraska Public Service Commission. The USERP proposed a Portability Fund of \$1 billion for annual grants to wireless ETCs. The USERP assigned the responsibility of identifying areas lacking quality wireless service, allocating construction grants and retaining oversight of the grants to ensure they are properly expended to state commissions.

<sup>16</sup> Comments of TCA, CC Docket No. 96-45, FCC 03J-1, filed September 30, 2003, at pp.7- 8. TCA observed that the USERP could offer a solution to the explosion in high-cost funding for wireless ETCs.

service. While the Joint Board appears to suggest a five-year transition period, TCA contends that the transition could be accomplished much more quickly. Wireless carriers have consistently - and quite successfully - convinced state regulators that five-year construction plans encouraged by the FCC are inappropriate in the rapidly changing wireless industry. The FCC can also rely upon these same flexible construction budgets to more quickly transition to the Mobility Fund.

The primary implementation requirement of the Mobility Fund is the reallocation of funds among the states. Currently, wireless ETC support is allocated among states based upon the willingness of that state's regulators to designate ETCs. State commissions that have designated wireless ETCs simply to "promote competition" receive substantial funding, while states that require adherence to the designation requirements of the 1996 Act receive little, if any, federal support. Fairness dictates that this policy must be changed and the Mobility Fund be allocated based upon unserved areas in each state. Furthermore, states who have received little wireless support should receive priority access to the Mobility Fund, as the states that have already received the bulk of the funds should have significantly reduced, or even eliminated, unserved areas.

B. A Separate POLR Fund Should be Created.

TCA also agrees with the Joint Board's recommendation to establish a POLR Fund. Rural LECs have relied upon federal and state support mechanisms to construct facilities in the most sparsely-populated highest-cost areas in order to provision ubiquitous service comparable with that provided in urban areas and at comparable rates. Without federal support mechanisms to provide an opportunity to recover these facility investments, there simply would not be universal access to telecommunications services at affordable rates. In exchange for these support mechanisms, state commissions require rural LECs to provide service to all who request it within their service territory. This POLR responsibility virtually assures

that rural LECs will continue to be required to invest in facilities that are cost-prohibitive to recover from the requesting customer. Wireless carriers are apparently well aware of the costs associated with the POLR obligation – as TCA is not aware of single wireless ETC that has accepted this responsibility.<sup>17</sup>

In addition to POLR responsibilities, rural LECs are also frequently required to (1) comply with extensive customer service rules; (2) meet numerous service quality standards; and (3) undergo intrusive and prolonged proceedings to modify rates for services, depreciable lives and qualify for state support mechanisms. Rural LECs incur substantial costs in complying with these requirements - none of which are imposed upon wireless ETCs. Furthermore, as evidenced by the wireless industry's vigorous efforts to promote federal legislation that would prohibit any form of state commission regulation, it is very evident that wireless carriers recognize the costs associated with these obligations.<sup>18</sup> The nation's consumer advocates, the National Association of State Utility Consumer Advocates (NASUCA), have also recognized this disparity in the competitive playing field between rural LECs and wireless ETCs:

ETC eligibility should entail specific public interest obligations in exchange for public support. In the case of ILEC ETCs, the quid pro quo is self-evident and traditional. ILECs typically provide high quality, highly reliable service ubiquitously throughout their service territory and are providers of last resort for that territory. Moreover, customers of ILECs have the substantial benefit of state regulation, which enforces service quality rules, billing and collection rules, and ensures just and reasonable rates. By contrast, wireless carriers are generally unregulated entities that provide highly variable service quality, varying levels of customer service, unilaterally determined

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<sup>17</sup> Colorado Public Utility Commission Rule 2189 allows carriers to apply for ETC, EP (access to the state high cost fund) and POLR designations simultaneously. Despite filing comments in a previous investigatory docket claiming that it would accept POLR obligations, when provided the opportunity to do so in seeking expanded ETC and EP designations in 2007, Viaero Wireless refused.

<sup>18</sup> See 47 U.S.C. §332. While state commissions are prohibited from regulating rates and entry of wireless carriers, they are permitted to regulate other terms and conditions of service. However, attempts for minimal state commission oversight in several states have encountered vociferous opposition from the wireless industry.

billing and collection policies, unilaterally determined rates and have no requirement to provide facilities in specific areas.<sup>19</sup>

C. Mandating Caps on the POLR Fund is Unnecessary and Will Prevent the Preservation and Advancement of Universal Service

TCA does have concerns regarding the Joint Board's proposed implementation of the POLR Fund. These concerns primarily can be attributed to the Joint Board's proposal to cap or even reduce the amount of support provided to rural LECs, which is simply not consistent with its recognition that ubiquitous broadband availability is an important component of modern life.<sup>20</sup> The proposals for a cap on the POLR fund is even more difficult to comprehend after considering the Joint Board's recognition of the commendable job by rural LECs of providing broadband services in sparsely populated areas during the past five years with flat or declining support amounts.<sup>21</sup> Complying with the Joint Board's recommended increase in data speeds – which is virtually certain to be adopted by the FCC – will require substantial facilities investment by rural LECs. Accordingly, TCA opposes an overall cap on the federal universal service fund.

TCA even more strongly opposes the proposal to cap the five individual support mechanisms at 2007 levels. Not only would this action reduce federal high-cost funds for rural LECs – it would also cap one of the federal support mechanisms that has incited rural LECs to deploy broadband-capable facilities during the past five years.<sup>22</sup> While TCA does not disagree with the Joint Board's contention that legacy support mechanisms may require reform, the starting point for that reform should not be a reduction in rural LEC support. Furthermore, the Joint Board's

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<sup>19</sup> Comments of the National Association of State Utility Consumer Advocates, CC Docket No. 96-45, FCC 03J-1, filed May 5, 2003, p. 8

<sup>20</sup> *Recommended Decision*, para. 59

<sup>21</sup> *Id.*

<sup>22</sup> The Joint Board is correct that overall high-cost support to rural LECs has remained constant over the past 5 years; however, Local Switching Support (LSS) has decreased, while Interstate Common

assertion that the reform of legacy programs could produce substantial savings is little more than wishful speculation. TCA contends that the possible legacy reforms identified by the Joint Board – synchronizing rural and nonrural support mechanisms, eliminating the “parent trap” freeze of support for sold exchanges, recognizing the increased cost of transport and backhaul incurred by rural LECs – provide considerable evidence that any reform that is consistent with the universal service principles articulated with the 1996 Act will actually increase, not decrease, the size of legacy support mechanisms.

D. Broadband Should be a Supported Service – However, the Proposed Broadband Fund Lacks Sufficient Detail to Warrant Support.

While TCA is supportive of adding broadband to the list of supported services, the Joint Board’s recommendation of a separate Broadband Fund lacks sufficient detail. Evidence of this can be found in the Joint Board’s inability to identify the purpose and the nature of the proposed separate Broadband Fund.<sup>23</sup> While TCA is initially supportive of several of the concepts articulated by the Joint Board for the Broadband Fund – a single recipient for unserved area, preventing duplicative support – implementation could very well produce counterproductive results. Accordingly, TCA must withhold support for a separate Broadband Fund until more clarity is provided.

TCA is also concerned that the Joint Board has proposed an insufficient amount of funds to adequately fund the ubiquitous deployment of broadband. Furthermore, the Joint Board’s recommendation to fund the Broadband Fund by diverting legacy support mechanisms from rural LECs would likely result in the deployment of fewer, not more, broadband-capable facilities in high-cost areas. Ubiquitous broadband availability – at increasing higher data speeds – is not a goal

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Line Support (ICLS) has increased. Rural LECs rely on ICLS for recovery of their investments in broadband-capable loop facilities.

<sup>23</sup> *Recommended Decision*, para. 68

that can be achieved without sufficient funding. The FCC should reject the Joint Board's attempt to do so.

E. State Commissions Should Have Roles and Responsibilities in Preserving and Advancing Universal Service

While TCA generally supports continuation of the state commission roles of designation and certification of ETCs, it is concerned about a lack of understanding of some state commissions as to the intended purpose of federal support mechanisms for rural LECs. While both the 1996 Act<sup>24</sup> and the FCC<sup>25</sup> have clearly articulated that providing universal service at below cost rates in high-cost areas is an intended use of federal support mechanisms, TCA has on more than one occasion encountered state commissions lacking this same understanding. Accordingly, TCA strongly recommends that the FCC reinforce this fundamental principle during implementation of the POLR Fund.

TCA also concurs with the Joint Board's recommendation that states should be encouraged to provide matching funds for the Mobility and Broadband Funds. The Joint Board is correct – that this would provide an incentive for state commissions to monitor the use of these funds. The lack of accountability in the existing ETC designation process has resulted in many state commissions simply “rubber stamping” any and all requests from wireless carriers on the hopes that some of the federal funds will actually be invested in their state. Wireless carriers are well aware of this lack of oversight by state commissions of federal support

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<sup>24</sup> Section 254(e) requires federal support “be used for the provision, maintenance and upgrading of facilities and services for which the support is intended,” which clearly includes offsetting the cost of provisioning service.

<sup>25</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking, *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, Report and Order, 16 FCC Rcd 11244, 11268- 70 (2001) at para. 187. The FCC explains why the responsibility for the certification of *federal* support mechanisms was delegated to *state* commissions, as follows: “the federal high-cost support that is provided to rural carriers is intended to enable the reasonable comparability of intrastate rates and states have jurisdiction over intrastate rates.”

mechanisms and typically, only request access to federal support and forgo the greater scrutiny afforded requests for access to state high cost funds.

#### IV. Identical Support Rule NPRM

##### A. Support for Wireless Carriers Must be Linked to Facility Investment

TCA commends the FCC for concluding that the identical support rule – which provides competitive ETCs with the same per-line support as the incumbent LEC – should be eliminated. Under the guise of competitive neutrality, the identical support rule has provided wireless carriers with billions of dollars from the federal universal service fund, purportedly to expand wireless coverage into high-cost unserved areas. While a few smaller wireless carriers have actually used universal service funds for this purpose – large national wireless carriers have received the vast majority of these funds and frequently “use” them for little more than profitability enhancement. The Joint Board has correctly recognized the failure of the identical support rule to promote appropriate public policy by conceding that the rule bears little or no relationship to the amount of money competitive ETCs have invested in rural and other high cost areas of the country.

During 2007, Criterion Economics, L.L.C. released an empirical study confirming that the designation of wireless ETCs has had little impact on improving customer choice or improving wireless coverage.<sup>26</sup> The Caves and Eisenach study recognized the inherent flaw in identical support rule – that instead of providing incentive for wireless ETCs to make availability-enhancing investments in underserved or unserved areas, it simply incents recipients to serve more customers within the subsidized service area. This can frequently be accomplished without facility investment, by simply investing in retail outlets, a bigger advertising budget or other marketing activities.<sup>27</sup> The Caves and Eisenach study found no evidence of

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<sup>26</sup> *The Effects of Providing Universal Service Subsidies to Wireless Carriers*, authored by Kevin W. Caves, PhD. and Jeffrey A. Eisenach, PhD., Criterion Economics, L.L.C., released June 13, 2007 (Caves and Eisenach study)

<sup>27</sup> *Ibid.*, p. 29

a positive relationship between universal service fund subsidies and wireless service availability and choice - even after considering efforts by regulators to affect the ways these subsidies are spent.<sup>28</sup>

B. Basing Wireless Support on Embedded Cost Would Have Many Advantages

TCA supports the Commission's conclusion that wireless ETC support should be based upon the actual (or embedded) cost of providing universal wireless service in high-cost areas. TCA contends that this approach holds considerable promise to replicate the success of rural LEC support mechanisms – which also are based upon embedded cost. Embedded costs are the only measure by which to accurately quantify the cost of providing universal service. Embedded costs are relatively easy to measure as they are the result of an expenditure of capital. External auditors, lenders and state and federal regulators rely upon and audit embedded costs, not hypothetical costs. Basing support upon the actual costs of the provider of universal service is the only way to incent investment in costs in high-cost areas. Finally, not only are hypothetical costs subjective and easily manipulated, they can only be derived from a proxy model, a complex and expensive undertaking.

TCA substantially concurs with the FCC's tentative conclusions regarding cost reporting requirements for wireless ETCs. Wireless ETCs should use Generally Accepted Accounting Principles (GAAP) and adhere to the same limits as rural LECs on depreciation, cost of capital, corporate operations expense and jurisdictional allocations. The FCC has requested comment on a proposal which would impose a small subset of the rural LEC reporting requirements upon wireless ETCs.<sup>29</sup> TCA supports this cost-effective proposal and contends that any slight

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<sup>28</sup> *Ibid.*, p. 37

<sup>29</sup> *Identical Support NPRM* at para. 15 The WiCAC Plan proposes that wireless ETCs report costs and investments using only 23 accounts.

increase in implementation costs would be more than offset by the more \$1.3 billion in annual federal universal service support currently received by wireless ETCs.

### C. Wireless ETCs Should Not Receive Access Recovery Mechanisms

TCA concurs with the FCC's conclusion that competitive ETCs should not receive federal support mechanisms attributable to access charge reform, specifically, ICLS, IAS and LSS. The FCC correctly notes that these access recovery mechanisms were created to limit increases in subscriber line charges, while removing implicit subsidies in interstate access rates. For wireline LECs, these access charge rate elements are highly regulated.<sup>30</sup> This is not the case for wireless ETCs – who have complete freedom to increase rates without any regulatory oversight.

Finally, TCA also agrees that competitive ETC support should be subject to a ceiling of the amount of per-line support received by the incumbent LEC. This ceiling should not include access recovery mechanisms. A ceiling on support would avoid rewarding competitive ETCs – who are generally subject to considerably less regulatory oversight - for inefficiencies and would also reduce incentives to inflate costs.

## V. Reverse Auctions NPRM

### A. Consumers will be Harmed by Reverse Auctions

Consumers in high-cost areas face many detriments and will receive very few benefits from the use of reverse auctions to allocate universal service support. Facility upgrades – especially those in high-cost areas – will simply not be made. Absent a direct linkage between investment in high-cost areas and high-cost support, carriers will focus investment in more profitable, lower cost areas.<sup>31</sup>

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<sup>30</sup> This also applies to wireline CLECs, whose access rates are limited to the rate charged by the incumbent LEC.

<sup>31</sup> The absence of this direct linkage between support and investment is the primary problem with the current provision of federal support for wireless ETCs. Wireless carriers have used federal

Providing high-cost support to the lowest bidder will inevitably lead to service quality degradation. Clearly, reverse auctions fail to meet the statutory objective of high-cost support mechanisms.

Rural LECs have constructed state-of-the-art networks to provide ubiquitous service throughout the entirety of their certificated service area. Rural LECs are also the only recipients of federal support mechanisms that must invest in facilities in high-cost areas *before* receiving support. Frequently, this requires that rural LECs borrow the necessary funds to make this uneconomic investment in infrastructure. Rural LECs heavily depend upon federal support mechanisms to repay these loans. Any uncertainty created surrounding the availability of federal support mechanisms would at a minimum increase the cost of obtaining financing and will likely result in a reduction in availability of financing these investments in facilities. The Rural Telephone Finance Cooperative (RTFC) – one of the primary lenders for rural LECs with more than two billion dollars in outstanding loans to rural providers – correctly recognizes the repercussions of reverse auctions, as follows:

Reverse auctions (competitive bidding) to determine high-cost universal service funding for incumbent rural local exchange carriers (RLECs) *will discourage investment* in the rural telecommunications infrastructure and *result in lesser quality service* to rural Americans. Such a high-cost support regime will cause lenders to reconsider lending into rural telecom space.<sup>32</sup>

#### B. Reverse Auctions Discriminate against Rural LECs

Because not all ETCs have the same responsibilities and obligations, competitive bidding would place some bidders at a distinct disadvantage. Unfortunately, rural LECs – the true providers of universal service in this country – would be the primary disadvantaged party. Rural LECs have far greater obligations

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support to primarily enhance profitability for serving existing customers. To the extent any additional facility investment is made, it generally does not occur in unserved or underserved areas.

<sup>32</sup> Comments of Rural Telephone Finance Cooperative, WC Docket No. 05-337, CC Docket No. 96-45, FCC 06J-1, dated October 10, 2006, p. 2 (*Emphasis added*).

and responsibilities than any other potential bidders. Until this core issue is resolved and all bidders have similar obligations and responsibilities, a fair and equitable competitive bidding process simply cannot be designed.<sup>33</sup> By requesting comment on many of these differing obligations, the FCC appears to recognize this fact. However, until these substantial differences are resolved there is simply not sufficient evidence for the FCC to conclude that reverse auctions offer potential advantages over current high-cost support distribution mechanisms.<sup>34</sup>

TCA observes that several unresolved issues – consumer protection, local rate regulation, geographic service areas, POLR obligations - are outside the jurisdictional oversight of the FCC and would significantly preempt state commission authority. TCA also remains unconvinced that reverse auctions would even reduce high-cost support mechanisms. The specific proposals contained in the Reverse Auctions NPRM all provide for multiple winners, which would appear to contradict the cost reduction benefits of competitive bidding. Furthermore, modifying rural LEC geographic service areas would require huge facilities investments, much of which would likely be duplicative. Finally, reverse auctions would provide high-cost support regardless of whether or not any actual investment occurs – replicating the results of the failed identical support rule.

### C. Allocating High-Cost Support with Reverse Auctions Does Not Comply with the Act

Finally, allocating high-cost universal service support based upon the results of a reverse auction would not comply with the statutory universal service provisions, which require the Commission to establish specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal

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<sup>33</sup> Previously, the Commission had recognized the significantly different obligations of LECs and wireless carriers and proposed two ETCs for each high cost area, enabling rural LECs to elect an initial ten-year period of support at existing levels. Should the Commission adopt any competitive bidding process for universal service support, it is imperative that it include a comparable transition provision.

service.<sup>35</sup> Requiring carriers to competitively bid for support mechanisms would increase the uncertainty surrounding the sufficiency and the predictability of these funds. The Act mandates that consumers in all parts of the country shall have access to reasonably comparable services at reasonably comparable rates. Because rural LECs rely upon federal support mechanisms to provide quality service at just, reasonable and affordable rates, any loss of support mechanisms in an auction would be required to be offset by increased rates. For many rural LECs, this increase would be quite substantial, violating both the statutory requirement for affordable and reasonably comparable rates.<sup>36</sup>

## VI. Conclusion

TCA commends the FCC for reaching the conclusion that the identical support rule - which has provided wireless ETCs windfall amounts of high-cost universal service funds – must be eliminated. TCA agrees that high-cost support for wireless ETCs should be based upon the actual cost of providing wireless service, not wireline service. TCA concurs with the recommendation of the Joint Board to create a separate Mobility Fund and contends that it would establish the necessary connection between network investment and high-cost support – which would result in an expansion of wireless coverage into unserved areas.

TCA also agrees with the FCC's decision to establish a separate POLR fund and to delay reform of the legacy rural LEC support mechanisms to a future proceeding. The imposition of arbitrary caps on rural LEC support mechanisms should be reconsidered, as this will threaten the ongoing deployment of broadband-capable facilities in rural areas. While TCA agrees that broadband should be a service supported by high-cost universal service support – it cannot support the proposed Broadband Fund until more specifics and funding are provided.

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<sup>34</sup> *Reverse Auctions NPRM*, para. 1

<sup>35</sup> 47 U.S.C. §254(b)(5)

<sup>36</sup> This same scenario is not applicable to wireless ETCs, who do not decrease rates once granted ETC status.

Finally, the FCC should discontinue its efforts to distribute high-cost universal service support with reverse auctions. Reverse auctions would discourage investment in rural areas and jeopardize the access of consumers to high-quality, comparably priced services. Reverse auctions for high-cost support simply fails to comply with the statutory obligation of the Act for specific, predictable and sufficient support mechanisms to preserve and advance universal service.

Respectfully submitted,

[electronically filed]  
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